

**STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

M.O.,
a minor, by and through
JEREMY OSTER,
as parent and next friend,

Plaintiff,

vs.

HONONEGAH COMMUNITY HIGH
SCHOOL DISTRICT #207, MICHAEL
J. DUGAN, in his official capacity as
Superintendent of Hononegah
Community High School District #207,
CHAD DOUGHERTY, individually and
in his official capacity as Executive
Associate Principal of Hononegah
Community High School, and ERIC
FLOHR, individually and in his official
capacity as Principal of Hononegah
Community High School,

Defendants.)

Case No. 3:18 CV 50260

Judge: Honorable Philip G. Reinhard

Magistrate Judge Iain D. Johnston

**DEFENDANTS, HONONEGAH COMMUNITY HIGH SCHOOL DISTRICT #207,
MICHAEL J. DUGAN, CHAD DOUGHERTY, AND ERIC FLOHR'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

NOW COMES Defendants, HONONEGAH COMMUNITY HIGH SCHOOL DISTRICT #207, MICHAEL J. DUGAN, CHAD DOUGHERTY, AND ERIC FLOHR (hereinafter "Defendants"), by and through their attorneys, Frank B. Garrett III and Hasti Anderson of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves this Honorable Court to dismiss Plaintiff's Complaint, with prejudice. In support thereof, Defendants state as follows:

1. On July 30, 2018, Plaintiff, high school student M.O., filed a three count complaint based on the central allegation that during a March 14, 2018 nationwide student-led walkout, Plaintiff was treated differently than her peers by Defendants

Dougherty and Flohr, pursuant to District's Policy § 7:135. Based on this single alleged incident, Plaintiff has brought First and Fourteenth Amendment claims under 42 U.S.C. § 1983 (Counts I, II, III).

2. Plaintiff's Complaint fails to plead a viable claim of liability pursuant to Section 1983 against the Defendants. In order for Plaintiff to establish an actionable claim under Section 1983, she must allege one of three bases for holding the District liable for the conduct at issue: 1) an express policy that, when followed, deprived her of her constitutional rights; 2) a widespread practice that, while not authorized by an express policy, is so permanent as to constitute a custom with the force of law; or 3) that her constitutional injury was caused by a person with "final policymaking authority." See *Monell v. Dep't of Social Svcs. Of City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018 (1978). Plaintiff's Complaint fails to meet any of the above bases. Specifically, Plaintiff admits the District's policies are not constitutionally infirm; Plaintiff's claims are brought pursuant to a single alleged incident; and pursuant to Illinois law, Defendants Dugan, Dougherty, and Flohr lack "final policymaking authority."

3. Plaintiff's official capacity claims against individual Defendants Dugan, Dougherty, and Flohr must be dismissed as such claims can only be brought against the School District's Board of Education.

4. Insofar as Plaintiff's Complaint alleges claims against Defendants Chad Dougherty and Eric Flohr, in their individual capacities, Defendants are entitled to qualified immunity, and such claims must be dismissed.

5. Plaintiff's Complaint fails to assert any substantial allegations against Defendant Flohr, in his individual capacity, establishing his involvement in the alleged

incident that may yield a plausible claim for relief, and therefore fails to state a claim upon which relief can be granted pursuant to 42 U.S.C. § 1983.

6. Accordingly, Defendants seek to have Plaintiff's Complaint dismissed for failure to state a claim upon which relief can be granted.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiff's Complaint in its entirety with prejudice.

Respectfully submitted,

HONONEGAH COMMUNITY HIGH SCHOOL
DISTRICT #207, MICHAEL J. DUGAN, CHAD
DOUGHERTY, AND ERIC FLOHR

By: s/ Hasti Anderson
Hasti Anderson

Hasti Anderson (6310969)
handerson@robbins-schwartz.com
Frank B. Garrett III (6192555)
fgarrett@robbins-schwartz.com
ROBBINS SCHWARTZ NICHOLAS
LIFTON & TAYLOR, LTD.
55 West Monroe Street, Suite 800
Chicago, Illinois 60603-5144
Telephone (312) 332-7760
Fax (312) 332-7768

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing DEFENDANTS, HONONEGAH COMMUNITY HIGH SCHOOL DISTRICT #207, MICHAEL J. DUGAN, CHAD DOUGHERTY, AND ERIC FLOHR'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT with the Clerk of the Court using the CM/ECF system on this 21st day of September, 2018, which constitutes service on all counsel of record, registered filing users, pursuant to Fed. R. Civ. P. 5(b) and L.R. 5.9.

s/ Hasti Anderson

Hasti Anderson